REMARKS

By this amendment, previously amended claims 1 and 8-10 are amended to clarify that the pricing technique is a module that may be substituted. This pricing technique module may consist of any number of pricing algorithms including the Weighted Average Selling Price technique. Support for this amendment is found in Paragraph [0103] which states:

> "The WASP technique and its supporting computer software are contained herein for purposes of example to illustrate the novelty of having a system that can incorporate a substitutable pricing technique (algorithm) into a business process."

No new matter has been added by the amendments to this application.

ANTICIPATION REJECTION

Claims 1-8 and 10, are rejected under 35 USC § 102(e) as being anticipated by McCall et al. (6,321,984).

The Applicants respectfully **TRAVERSES** the rejection and asserts the following response.

In view of the amendments and remarks provided herein, the rejection should be reconsidered and withdrawn.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil. Co. of Cal., 814 F.2d 628, 631 (Fed. Cir. 1987). Accordingly, McCall must contain every element of claim 1 to properly anticipate it. Because, McCall does not disclose at least one element of claim 1, Examiner's rejection should be withdrawn.

McCall is directed to an integrated customer reward processing system and fuel dispensing apparatus that allows retailers to dispense fuel at a discount in accordance with a consumer's achievement of predefined purchasing criteria. In other words, McCall discloses a

reward system that provides consumers with a mechanism to obtain discounted fuel (Col 2, Line 37-40). McCall is specifically directed to calculating *a discount for a specific consumer* based on that consumer's purchase history. However, McCall fails to disclose or suggest any technique for obtaining the underlying price to which this discount will be applied.

Examiner asserts that, "the server facility 204 processes the data about a particular customer and automatically generates pricing data (gas price) based on the fuel deal data." However, Applicant respectfully disagrees with Examiner's interpretation. McCall states that the reward system notifies the fuel dispensing apparatus that a discount fuel sale is authorized and gives the amount of a discount (Col 2, Line 42-46). The fuel dispensing apparatus then applies the discount to that specific transaction. McCall does not generate prices but instead merely applies a discount to a pre-determined price. However, McCall does not address how the pre-determined price is obtained.

By contrast, Applicant's claimed embodiments are directed to *pricing fuels* in transactions between producers, agents, brokers, other middlemen and end customers involved in the fuel sale and distribution industry (Paragraphs [0001-0002]). Claim 1 recites in pertinent portions, "a server facility configured to store fuel deal data, and to process said fuel deal data to automatically generate *pricing data* based on said fuel deal data and in accordance with a pre-determined pricing technique." In other words, claim 1 describes a technique for *calculating a price*, as opposed to a discount.

Additionally, claim 1 recites a "substitutable pre-determined pricing technique". Because McCall fails to disclose or suggest any technique for calculating a price, it must necessarily be true that McCall doesn't disclose or suggest a pricing technique that can be substituted or

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modified. Therefore, McCall does not disclose or suggest every element of claim 1 and can not anticipate it. Accordingly, the anticipation rejection of claim 1 should be withdrawn.

Additionally, because claims 2-8 and 10 depend from claim 1, they also can not be anticipated by McCall. Therefore the anticipation rejection of claims 2-8 and 10 should be withdrawn.

OBVIOUSNESS REJECTION

Claims 1-20 are rejected under 35 USC § 103(a) as being unpatentable over Axxis Petroleum and the petroleum price analysis software that they produce and sell.

The Applicants respectfully TRAVERSES the rejection and asserts the following response.

Claims 1-20 also stand rejected as allegedly obvious in view of Axxis Petroleum and the petroleum price analysis software that they produce and sell. In view of the remarks below, this rejection should be reconsidered and withdrawn.

To establish a prima facie case of obviousness, the Examiner must meet three criteria. MPEP § 2143. First, there must be suggestion or motivation to modify the references or to combine the reference teachings. *In re Rouffet*, 149 F.3d 1350 (Fed. Cir. 1998). Second, there must be a reasonable expectation of success. *In re Merck & Co.*, 800 F.2d 1091 (Fed. Cir. 1986). Third, the prior art references must teach or suggest all the limitations of the Applicant's claim. *In re Royka*, 490 F.2d 981 (CCPA 1974).

Axxis Petroleum is directed to a software system that captures and processes daily electronic supplier price notifications and generates a comprehensive list of price averages for a customer. However, as stated by the Examiner, Axxis does not teach or suggest that the

predetermined pricing technique results in fuel prices based on weighted averages. Moreover, Axxis does not teach or suggest a substitutable pricing technique as recited in claim 1.

Further, substituting the pricing technique and calculating weighted averages can not be inherent in Axxis. When a reference is silent about an asserted characteristic, extrinsic evidence must be presented for the reference to anticipate Applicant's claims. *Continental Can Co. v. Monsanto Co.*, 948 F.2d 1264, 1268 (Fed. Cir. 1991). Because there is no extrinsic evidence that Axxis uses a substitutable pricing technique or weighted averages, Axxis can not anticipate these elements. Therefore, Axxis fails to teach or suggest all the limitations of claims 1 and 11 and the obviousness rejection of these claims should be withdrawn as required by *In re Royka*.
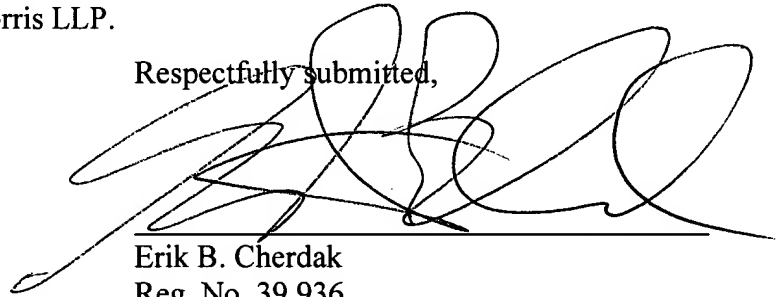
Additionally, the Examiner asserts that "weighted averages" are common in the analysis of prices and thus it would have been obvious to one of skill in the art to include them in Axxis. However, even if Axxis could be modified to include weighted average pricing, it is not enough that a reference *may* be modified to include a specific element without a suggestion or motivation in the reference to actually do so. *In re Mills*, 916 F.2d 680 (Fed. Cir. 1990). As already illustrated above, there is no suggestion or motivation in Axxis to include weighted averages. Also, Applicant asserts that a substitutable pricing technique is novel and therefore would not have been obvious to one of ordinary skill in the art. Accordingly, the obviousness rejection should be withdrawn under *In re Rouffet*.

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CONCLUSION

The Applicants respectfully submits that the above-titled patent application is in condition for allowance, and such action is earnestly requested. If the Examiner believes that an in-person or telephonic interview with the Applicants' representatives will expedite the examination of this application, the Examiner is invited to contact the undersigned attorney of record.

Nevertheless, in the event of any variance between the fees determined by the Applicants and those determined by the U.S. Patent and Trademark Office, the Examiner is requested to contact the undersigned attorney or is hereby authorized to charge any appropriate such fee to Deposit Account No. 04-1679, Duane Morris LLP.

Respectfully submitted,

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